name cases show that the deceiving of the public by the counterfeiting or simulation of the plaintiff's goods resulting in his damage may be enjoined by him. *Reddaway* v. *Banham*, [1896] A. C. 199. Another example of an act tortious as regards a third person and resulting in damage to the plaintiff's trade being held within the principle of unfair competition is *Hughes* v. *McDonough*, 43 N. J. Law 459. On the other hand not every act tortious as regards prospective customers of the plaintiff, and resulting in damage to his business, will be enjoined at his request. Deceit of the public as to the quality of goods, false testimonials and untrue representations of fact, although drawing away trade that otherwise would go to the plaintiff do not entitle him to the intervention of the courts. *American Washboard Co.* v. *Saginaw Manufacturing Co.*, 103 Fed. Rep. 281.

The question is one of sound public policy and practical expediency. On the one hand should be considered the necessity of protecting a man's right to that trade which he has built up by his industry and enterprise, a right of property, possessing commercial value and frequently bought and sold. On the other hand lies the danger of opening too wide a field of litigation and extending the range of tort liability too far beyond those persons against whom the wrongful acts are primarily directed. The principal case is one about which no difference of opinion will arise as to the expediency and good policy of equitable intervention. Corporations engaged in public employments should not be permitted to build up their own or another's business by the abuse of those powers with which, by reason of the nature of their calling, they have become invested. The discrimination complained of in the principal case was clearly such an abuse. The fact that under the circumstances the persons directly discriminated against were not likely to complain rendered the damage to the plaintiff all the more certain and the good policy of the court's intervention all the more clear.

THE CARE REQUIRED OF DIRECTORS. — Whatever may be the precise relation of directors to their corporation, their direct responsibility is to the corporation. On insolvency, the right to hold them accountable passes to the receiver. 3 THOMP., CORP., § 4121. In a recent case in New Jersey, the directors of a bank were held liable to the receiver for loss resulting from negligence in supervising the management of the bank. *Campbell* v. *Watson*, 50 Atl. Rep. (N. J. Ch.) 120. The principal negligence complained of was a failure to make examinations with the frequency stipulated in the by-laws, and especially a total failure to look at the balance sheets returned by a correspondent bank, in consequence of which the cashier was able to draw drafts for amounts in excess of those entered on the books.

It has been suggested that directors should be liable only for gross negligence. *Swentzel* v. *Penn Bank*, 147 Pa. St. 140. It is said that they are gratuitous mandataries, and cannot be expected to give a great amount of attention to the position. If they are held strictly accountable, no honest man will desire to accept the position. *Spering's Appeal*, 71 Pa. St. 11. On the other hand it is urged that such a test would allow directors to give a corporation credit by the use of their names, while remaining practically figureheads. Accordingly the rule of reasonable care

under the circumstances is adopted. *Gibbons* v. *Anderson*, 80 Fed. Rep. 345; *Hun* v. *Cary*, 82 N. Y. 65. This is the broad rule, so often applied in other connections, and is much preferable both theoretically and practically, avoiding as it does the rather discredited doctrine of degrees of negligence. Obviously also the care which ought to be bestowed must vary with the nature of the business, and the time and place of its exercise. The care of a prudent man in his own business and the care ordinarily exercised by directors would seem to be valuable rather as evidence of what is reasonable care than as direct standards of care. Probably many of the differences in the cases are due rather to the application of the law to the facts than to any marked conflict in the conception of the law; differences as to what constitutes reasonable diligence. *Cf. Briggs* v. *Spaulding*, 141 U. S. 132; *Percy* v. *Millaudon*, 8 Mart. N. S. (La.) 68. The principal case in the main adopts the preferable rule stated above. Moreover, its application of the law to the facts, though the result is extremely hard on the directors, seems justified.

THE SPECIFIC ENFORCEMENT OF CONTRACTS BY INJUNCTION. — The latest decision of the English Chancery Division gives promise for the future of an intelligible treatment of the much confused subject of specific enforcement of affirmative covenants by process of injunction. *Metropolitan Electric Supply Co.* v. *Ginder*, [1901] 2 Ch. 799. A bill was brought by an electric light company against a hotel proprietor who had agreed to take from the plaintiff all the electricity he might require for five years. The prayer was for an injunction restraining the defendant from purchasing electric energy from any one other than the plaintiff during that period. In granting the injunction the court reviews the earlier decisions, and cites with approval and as embodying the now settled rule of the court the opinion of Lord Selborne in *Wolverhampton, etc., R. R.* v. *London, etc., R. R.*, L. R. 16 Eq. 433.

If the opinion of Lord Selborne in the case mentioned represents the present view of the English court upon this subject it may be of interest to note the general outlines and to consider the effect upon the earlier cases of *Lumley* v. *Wagner*, 1 DeG., M. & G. 604; *Fothergill* v. *Rowland*, L. R. 17 Eq. 132; *Donnell* v. *Bennett*, 22 Ch. Div. 835, and *Whitwood Co.* v. *Hardman*, [1891] 2 Ch. 416. The general principles laid down by Lord Selborne appear to be as follows. The court will first construe the contract of which specific performance is sought. The substance of the agreement as well as the language used will be regarded, and weight will not be given to the accidental use of affirmative rather than negative forms of expression. The question will then arise whether the act sought to be enjoined is a breach of the substance of the agreement, and if so, whether adequate damages can be had in an action at law. It must further appear that the contract is of a kind that equity can and will specifically enforce. Under this consideration will be raised questions of public policy, expediency, mutuality and others resting largely in the discretion of the court. If these issues all result in favor of the party seeking relief, equity will grant relief by injunction or affirmative decree, regardless of the affirmative or negative form of the original agreement.

Tested by these principles *Fothergill* v. *Rowland* and *Whitwood Co.* v. *Hardman, supra*, are supported, the former upon the ground of the ade-